

In the Matter of License No. 120938
Issued to: WOODY L. CAIN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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WOODY L. CAIN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 9 April, 1953, an Examiner of the United States Coast Guard at Norfolk, Virginia, suspended License No. 120938 issued to Woody L. Cain upon finding him guilty of negligence based upon three specifications alleging in substance that while serving as Master on board the American SS MARINE COURIER under authority of the document above described, on or about 13 December, 1952, while said vessel was at sea, he contributed to a collision between the MARINE COURIER and the British tanker STANBELL, in a crossing situation wherein the MARINE COURIER was the burdened vessel and the STANBELL was the privileged vessel, in that he failed to keep out of the way of the STANBELL (First Specification); he crossed ahead of the privileged vessel when the circumstances did not admit (Second Specification); and he failed to slacken speed in time while approaching the STANBELL (Third Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by attorneys of his own selection and he entered a plea of "not guilty" to the charge and each of the three specifications proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Master and Chief Mate of the STANBELL, and the Chief Officer and First Assistant Engineer of the MARINE COURIER. In addition, the parties entered into several stipulations.

In defense, Appellant offered in evidence his own sworn testimony. He states that the red side light of the STANBELL was visible to him at all times after he sighted the STANBELL bearing about two or three points on the starboard bow of the MARINE COURIER at a distance of approximately three miles; and that the

course and speed of the MARINE COURIER was not changed until it was too late to avoid collision although the bearing of the STANBELL did not vary more than a point. Appellant explained that he thought the STANBELL intended to change course so that she would be

on a parallel course with the MARINE COURIER which would then be in an overtaking position.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, and after making a general ruling on Appellant's proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications. He then entered the order suspending Appellant's License No. 120938, and all other licenses issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of one month after the date on which Appellant surrenders his license to the nearest U. S. Coast Guard Office.

From that order, this appeal has been taken, and it is urged that Appellant was not properly charged by the specifications which allege the existence of a "crossing situation"; this was a case of "special circumstances" because the STANBELL was not on a steady course and she was constantly accelerating speed after having dropped a pilot; and, therefore, since the STANBELL was not a "privileged" vessel in a crossing situation nor was the MARINE COURIER a "burdened" vessel, the specifications should not be upheld.

APPEARANCES: Messrs. Baird, White and Lanning of Norfolk,
Virginia, By Francis N. Crenshaw, Esquire, of
Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 13 December, 1952, Appellant was serving as Master on board the American SS MARINE COURIER and acting under authority of his License No. 120938 while the ship was in the vicinity of Cape Henry, Virginia, enroute from Galveston, Texas, to Norfolk, Virginia.

At 0443 on this date, the MARINE COURIER (a 441 foot Liberty type cargo vessel) was in a collision with the British tanker STANBELL, which is 503 feet in length, approximately a mile and a half off Cape Henry. It was a dark, clear night and the visibility

was good.

The STANBELL was outbound from Baltimore, Maryland, when she stopped at 0430 on a heading of 180 degrees true to disembark the pilot about a half mile west of buoy R2A. This point was about 1.25 miles in a northwesterly direction from the place of collision. At 0432, the STANBELL's engines were ordered ahead full and she gradually accelerated speed up to about 9 knots by the time of the collision. She proceeded on a slightly curving course to port under left rudder until heading approximately 125 degrees true. At 0435, the MARINE COURIER was observed bearing 2 to 3 points on the port bow. At about 0440 and when the MARINE COURIER was more than a half mile off the port bow, the STANBELL sounded a one-blast whistle signal and her rudder was put slightly to starboard. Another single blast was sounded by the STANBELL at 0441 when the two ships were about a quarter of a mile apart and her rudder was ordered hard right. The vessels came together at a ninety degree angle as the bow of the STANBELL struck the starboard side of the MARINE COURIER in the vicinity of her number two hatch. The collision occurred approximately a mile to the south of buoy R2A and a little to the east of that buoy.

The MARINE COURIER was three-quarters of a mile to the southward of junction buoy RB and coming left to 285 degrees true at a speed of 11.5 knots to head for Thimble Shoal Channel when Appellant saw the STANBELL's red side light and white running lights at about 0432 and at a distance of at least three miles. These lights were visible at all times and the green side light of the STANBELL could not be seen from the MARINE COURIER. When the two ships were about one mile apart, the STANBELL was bearing between two and three points on the starboard bow of the MARINE COURIER. Appellant did not vary his ship's course or speed until he heard the STANBELL's one-blast whistle signal at about 0441. Appellant then ordered left full rudder but this action was not taken in time to avoid the collision.

OPINION

Appellant's contentions do not persuade me to reverse the conclusions of the Examiner. The purpose of this proceeding is not to exonerate or to find at fault the navigation of the STANBELL; but it is solely for the purpose of determining whether Appellant was negligent in his handling of the MARINE COURIER. Hence, the failure of the STANBELL to observe her duty under Article 21 of the Inland Rules of the Road (33 U.S.C. 206) to maintain her course and speed when in the position of the privileged vessel in a crossing situation, did not release the MARINE COURIER from her duty to keep out of the way of the STANBELL since she was definitely, at all times, on a crossing course with, and on the starboard side of, the

MARINE COURIER (33 U.S.C. 204). Since the MARINE COURIER was obligated to keep out of the way, she was also bound to avoid crossing ahead of the STANBELL (33 U.S.C. 207) and, if necessary, to slacken speed, stop, or reverse (33 U.S.C. 208). This proposition is clearly stated in The Norfolk (D.C.Md., 1924), 297 Fed. 251, from which Appellant has quoted extensively in his brief on appeal. In that case, the so-called privileged vessel, the NORFOLK, sounded one blast but did not comply with Article 21. Nevertheless, the court held both ships at fault and stated:

"The vessels were on crossing courses and the starboard hand rule applied. It was the duty of the CYNTHIA to keep out of the way of the NORFOLK, to avoid crossing ahead of her, and on approaching her, if necessary, to slacken speed, stop, or reverse."

Another similar situation existed in The Jacob Luckenbach (D.C.Md., 1913), 206 Fed. 226, aff. 219 Fed. 683. The SIGMARINGEN weighed anchor five or six minutes before colliding with the JACOB LUCKENBACH at the intersection of the main channel to Baltimore and the Curtis Bay Channel. The SIGMARINGEN commenced swinging to starboard on a crossing course with the LUCKENBACH which was approaching down the Curtis Bay Channel in full view of the SIGMARINGEN and at a distance of half a mile. The LUCKENBACH continued at her speed of five knots although the SIGMARINGEN was on the starboard bow of the LUCKENBACH. The parties differed as to the applicable rules of navigation; but, in affirming the judgment of the District Court, the Circuit Court of Appeals held both vessels at fault and stated that since danger of collision was apparent and since the SIGMARINGEN was on the starboard side of the LUCKENBACH on a crossing course, the latter was required to keep out of the way and she should have reduced speed until the intended course of the SIGMARINGEN was ascertained.

This is not a case of special circumstances where a ship is maneuvering to pick up or drop a pilot. The pilot had left the STANBELL at least eleven minutes before the collision took place.

Since Appellant was mistaken as to the intention of the STANBELL, he was obviously uncertain as to her intended course. And although he testified that the STANBELL remained off the starboard bow of the MARINE COURIER and that the STANBELL's red side light was visible at all times, he obeyed none of the rules applicable to his vessel. Appellant's primary obligation was to keep out of the way of the STANBELL even if it was necessary to stop the MARINE COURIER dead in the water in order to obey the rule. Therefore, Appellant was negligent as alleged in the three specifications.

ORDER

The Order of the Examiner dated at Norfolk, Virginia, on 9
April, 1953, is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 20th day of August, 1953.